

§ 231.6

40 CFR Ch. I (7–1–11 Edition)

the Assistant Administrator for Water and Waste Management.

(c) Where the Regional Administrator, or his designee, decides to withdraw the proposed determination, he shall promptly notify the Administrator by mail, with a copy to the Assistant Administrator for Water and Waste Management, who shall have 10 days from receipt of such notice to notify the Regional Administrator of his intent to review such withdrawal. Copies of the notification shall be sent to all persons who commented on the proposed determination or participated at the hearing. Such persons may submit timely written recommendations concerning review.

(1) If the Administrator does not notify him, the Regional Administrator shall give notice at the withdrawal of the proposed determination as provided in § 231.3(d). Such notice shall constitute final agency action.

(2) If the Administrator does decide to review, the Regional Administrator or his designee shall forward the administrative record to the Administrator for a final determination under § 231.6. Where there is review of a withdrawal of proposed determination or review of a recommended determination under § 231.6, final agency action does not occur until the Administrator makes a final determination.

(d) Any recommended determination under paragraph (b) of this section shall include the following:

(1) A summary of the unacceptable adverse effects that could occur from use of the disposal site for the proposed discharge;

(2) Recommendations regarding a final determination to prohibit, deny, restrict, or withdraw, which shall confirm or modify the proposed determination, with a statement of reasons.

(e) The administrative record shall consist of the following:

(1) A copy of the proposed determination, public notice, written comments on the public notice and written submissions in the hearing file;

(2) A transcript or recording of the public hearing, where a hearing was held;

(3) The recommended determination;

(4) Where possible a copy of the record of the Corps or the state pertaining to the site in question;

(5) Any other information considered by the Regional Administrator or his designee.

§ 231.6 Administrator's final determinations.

After reviewing the recommendations of the Regional Administrator or his designee, the Administrator shall within 30 days of receipt of the recommendations and administrative record initiate consultation with the Chief of Engineers, the owner of record, and, where applicable, the State and the applicant, if any. They shall have 15 days to notify the Administrator of their intent to take corrective action to prevent an unacceptable adverse effect(s), satisfactory to the Administrator. Within 60 days of receipt of the recommendations and record, the Administrator shall make a final determination affirming, modifying, or rescinding the recommended determination. The final determination shall describe the satisfactory corrective action, if any, make findings, and state the reasons for the final determination. Notice of such final determination shall be published as provided in § 231.3, and shall be given to all persons who participated in the public hearing. Notice of the Administrator's final determination shall also be published in the FEDERAL REGISTER. For purposes of judicial review, a final determination constitutes final agency action under section 404(c) of the Act.

§ 231.7 Emergency procedure.

Where a permit has already been issued, and the Administrator has reason to believe that a discharge under the permit presents an imminent danger of irreparable harm to municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas) wildlife, or recreational areas, and that the public health, interest, or safety requires, the Administrator may ask the Chief of Engineers to suspend the permit under 33 CFR 325.7, or the state, pending completion of proceedings under Part 231. The Administrator may also take appropriate action as authorized under section 504